

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 19507 of 2004

Between:

Jaya Bharathi Constructions Pvt. Ltd., rep. by its Managing
Partner, G. Sridhar Rao, S/o. Late G. Hanumantha Rao, 39 years,
Plot No. 21, street No.3, Umanagar, Begumpet, Hyderabad.

... PETITIONER

AND

- 1 The Commissioner of Workmen's Compensation and Asst.
Commissioner of Labour-I, Hyderabad.
- 2 R. Sakhubhai, W/o. Late Lakshmaiah,
R/o. H.No.13-2-58, Kabirnagar, Hyd.
- 3 R. Vijayalakshmi, D/o. late Lakshmaiah,
R/o. H.No.13-2-58, Kabirnagar, Hyd.
- 4 Venkat Swamy, R/o. 4-58/7, Kukatpalli, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an order, direction or writ more particularly one in the nature of writ of Certiorari/Mandamus or any other appropriate writ calling for the entire records and declare the order in I.A.NO.10/4 in W.C.No. 41/03, Dt. 20.9.2004 by set aside the order and consequently direct the respondent No.1 to reopen the matter in W.C.No.41/03, Dt. 7.6.2004 and permit to cross examine the witness and also give an opportunity to hear the petitioner's contention.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2 and 3: Mr.A.V.K.S.Prasad

Counsel for the Respondent No.4: Mr.Baradi Madhukar Rao

The Court, at the stage of admission, made the following:

ORAL ORDER:

This writ petition is filed challenging the order dated 20.9.2004 in I.A.No.10 of 2004 in W.C.No.41 of 2003 on the file of Commissioner for Workmen's Compensation and Asst. Commissioner of Labour, Hyderabad and to set aside the same.

Heard the learned counsel for the petitioner and the learned Government Pleader for Labour and perused the material on record.

The learned counsel for the petitioner has contended that the ground that the authority has no power to entertain any application for setting aside the *ex parte* order is unsustainable in view of the decision reported in **PREMCHAND Vs. WORKMEN COMPENSATION COMMISSIONER** and he has further contended that the order suffers from serious incurable infirmities.

On the other hand, the learned counsel for the official respondent has contended that though several opportunities were given to the petitioner, he did not avail them and therefore, the order under challenge does not suffer from incurable infirmities so as to call for interference by this Court. He has further contended that under Section 30 of the Workmen's Compensation Act, 1923 an alternative remedy is provided and the petitioner has to work it out by filing an appeal.

W.C.No.41 of 2003 was filed claiming compensation of Rs.3,00,000/- under the provisions of Workmen's Compensation Act, 1923 against two opposite parties for the death of one R.Laxmaiah, who died on 21.4.2001 in an accident that occurred during the course of his employment under opposite party No.1. After considering the evidence on record, the learned Commissioner directed Opposite Party No.2-writ petitioner to deposit an amount of Rs.2,90,758/-. When the copy of the award was received by him, immediately he

contacted his advocate who informed him that due to sudden demise of his father-in-law, he could not attend the Court. After examination of the witness, the matter was posted for cross-examination on 29.3.2004. On that day, both the counsel did not turn up. Again the matter was adjourned to 16.4.2004 for cross-examination. Both the opposite parties were absent and again it was posted to 30.4.2004, but the counsel for opposite parties did not turn up. Hence, the matter was posted for arguments and the award was passed. Challenging the said award, the petitioner filed I.A.No.10 of 2004 in W.C.No.41 of 2003 under Order 9 Rule 13 to set aside the award on the ground that his right of cross-examination of the witness was forfeited and to allow him to adduce his evidence, but that petition was dismissed. Admittedly, an alternative remedy is provided under Section 30 of the Workmen's Compensation Act. It is not a case of denial of the right of the petitioner in adducing the evidence or violation of principles of natural justice. It is also not the case that the Commissioner for Workmen's Compensation has no jurisdiction to pass an award.

For the foregoing reasons, the writ petition is disposed of with a direction to the petitioner to avail alternative remedy of appeal available under law. It is made clear that any findings or observations made in this writ petition will not have any bearing or impact on the appeal that may be filed by the petitioner. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

10th March, 2005

bcj

To

1 The Commissioner of Workmen's Compensation and
Assistant Commissioner of Labour-I, Hyderabad.

2 Two C.Cs. to the Government Pleader for Labour, High Court Buildings,
Hyderabad (OUT)

3 Two C.D. copies